

ALEX PINKHAM  
MARY ANNE PINKHAM

IBLA 80-789

Decided January 16, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring the Meat In The Pot, Discovery, Eurika, and Dorothy lode mining claims abandoned and void. AA MC 30232 through 30235.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Recordation

The Federal regulations at 43 CFR 3833.4(a) do not conflict with 43 CFR 3833.4(b) which pertains to the filing of defective or untimely instruments under laws other than the Federal Land Policy and Management Act.

2. Administrative Authority: Generally--Constitutional Law: Generally--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act are constitutional.

3. Estoppel--Federal Employees and Officers: Authority to Bind Government

Reliance on erroneous information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Robert L. Manley, Esq., Hughes, Thorsness, Gantz, Powell & Brundin, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Appellants appeal from the decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 6, 1980, holding the Meat In The Pot, Discovery, Eurika, and Dorothy lode mining claims abandoned and void because of appellants' failure to file on or before October 22, 1979, evidence of annual assessment work or alternatively, notice of intention to hold the claims, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and corresponding regulations, 43 CFR 3833.2 and 43 CFR 3833.4(a). The record shows that appellants located the mining claims between July 9, 1962, and July 26, 1970, and submitted copies of the location notices and other documents to BLM on October 2, 1979. The record indicates that appellants did not submit either evidence of assessment work or a notice of intention to hold the claims on or before October 22, 1979, or at any time thereafter.

In their statement of reasons on appeal appellants assert the following:

(1) The determination of abandonment is governed by 43 C.F.R. § 3833.4(b) which provides in part: "[t]he fact that an instrument is filed in accordance with other laws permitting filing or recording thereof . . . shall not be considered failure to file an instrument under this subpart." Appellants filed an affidavit of annual labor for the assessment year 1979 with the Seward Recording District, State of Alaska, pursuant to 43 U.S.C. § 1744(a)(1) (1976) and A.S. 27.10.150 (1960). Therefore, the presumption that appellants have abandoned their mining claims, which is based upon a determination that they have failed to file affidavits of annual assessment work has been erroneously applied. 43 C.F.R. § 3833.4(b) states that under these facts such filing shall not be considered failure to file so as to constitute a conclusive presumption of abandonment under 43 C.F.R. § 3833.4(a).

(2) The conclusive presumption mandated by § 314(c) of FLPMA, 43 U.S.C. § 1744(c) and 43 C.F.R. § 3833.4(a) deprives appellants of their property without equal protection and due process of law in violation of the Fifth Amendment to the United States Constitution.

(3) The Bureau of Land Management should be estopped from applying the conclusive presumption of abandonment to appellant's mining claims because appellant's relied in good faith upon assertions by BLM personnel that appellants

had filed all necessary instruments. When Mr. Pinkham filed his record of notice of location on all of the claims with the Bureau of Land Management ("BLM") on October 2, 1979, he asked the BLM personnel if there were any other requirements or filings which he had to meet. He was informed that he did not have to make any other filings.

Appellants should not be penalized for relying upon instructions of BLM agents and the BLM should be estopped from complaining that there has been a failure to file an instrument when it has informed appellants that no other instruments needed to be filed.

[1] Section 314(b) of FLPMA, supra, and 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, shall, on or before October 22, 1979, file with BLM evidence of annual assessment work performed during the previous assessment year, or alternatively, a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claims under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). The relevant portion of the Act and regulations are clear and controlling upon the Board. There is no conflict between subsections (b) and (c) of section 314, 43 U.S.C. § 1744, and its implementing regulation 43 CFR 3833.4(a) and (b). 1/ Subpart 3833.4(b) of 43 CFR does not excuse compliance with the requirements set forth in FLPMA. The fact that appellant filed affidavits of annual assessment work with the Recorder's office of the Seward Recording District does not obviate the need to comply with the mandatory filing requirements set forth in the Federal statutes and their implementing regulations.

[2, 3] The Board adheres to its earlier holdings that the Department, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional. Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153, (1972); Masonic Homes of California, 4 IBLA 23, 78 I.D. 312 (1971). If an enactment of Congress were to be in conflict with the Constitution, it is exclusively within the jurisdiction of the judicial branch,

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1/ 43 CFR 3833.4(a) and (b) provide in part:

"§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

(b) The fact that an instrument is filed in accordance with other laws permitting filing or recording thereof and is defective or not timely filed for record under those laws, \* \* \* shall not be considered failure to file an instrument under this subpart."

not the executive branch, to so declare. Al Sherman, 38 IBLA 300 (1978), reconsideration denied, March 28, 1979.

In addition, it has been held that reliance upon information or opinion of any officer, agent, or Federal employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3. Cf. Union Oil Co. v. Morton 512 F.2d 743, 748 (9th Cir. 1975). The statute gives no authority to this Department to excuse lack of compliance with the strict recording requirements, or to afford any form of relief from the consequences imposed by the statute for noncompliance.

When appellants failed to file either affidavits of assessment work or notices of intention to hold the claims for calendar year 1979, despite the fact that appellants had filed copies of the notices of location of the claims, BLM properly held the claims to have been abandoned and declared them void. Don Sagmoen, 50 IBLA 84 (1980); Victor Delange, 48 IBLA 222 (1980); Juan Munoz, 39 IBLA 72 (1979); and Public Service Company of Oklahoma, 38 IBLA 193 (1978).

Appellants have requested an evidentiary hearing and oral argument on appeal. Insomuch as appellants raise no new issues of fact or law before the Board which would warrant either a hearing or oral argument, each request is denied. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

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Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Bernard V. Parrette  
Chief Administrative Judge

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2/ Appellants desire an evidentiary hearing "to determine whether the claims have in fact been abandoned." However, appellants recognize that the abandonment is a conclusive presumption of law imposed by statute rather than a question of fact to be resolved by an examination of evidence.

